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In re Application of KOPF  
U.S. Application No.: 09/980,458  
PCT Application No.: PCT/EP00/05203  
Int. Filing Date: 07 June 2000  
Priority Date Claimed: 11 June 1999  
Attorney Docket No.: 111363  
For:

DECISION

This is in response to applicant's "Small Entity Assertion and Request for Refund" filed 04 March 2002.

**BACKGROUND**

On 07 June 2000, applicant filed international application PCT/EP00/05203, which claimed priority of an earlier United States application filed 11 June 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 03 January 2001, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired on 11 December 2001.

On 04 December 2001, applicant filed national staged papers in the United States Designated/Elected Office (DO/EO/US). The submission included, *inter alia*, the basic national fee required under 35 U.S.C. 371.

On 04 March 2002, applicant filed the present request for refund.

**DISCUSSION**

37 CFR 1.28(a) states in relevant part,

A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a


refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

In the present case, timely payment of the \$890.00 basic national fee was made on 04 December 2001. Therefore, a request for refund must be filed by 04 March 2003 to satisfy the provisions of 37 CFR 1.28(a). The present request for refund was timely filed.

### CONCLUSION

For the reasons above, the request for refund under 37 CFR 1.28 is GRANTED.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including refunding \$445.00 of the basic national fee to Deposit Account No. 15-0461 and forwarding the application to the examining group thereafter.



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